

**Exco Contracting, Ltd. and International Union of Operating Engineers, Local 324, 324-A, 324-B, 324-C, and 324-D, AFL-CIO. Case 7-CA-19023**

May 28, 1982

**DECISION AND ORDER**

BY MEMBERS JENKINS, ZIMMERMAN, AND  
HUNTER

On August 7, 1981, Administrative Law Judge William A. Gershuny issued the attached Decision in this proceeding.<sup>1</sup> Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed an answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Exco Contracting, Ltd., Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(d):

"(d) Make whole its employees for any and all losses they may have suffered attributable to Respondent's nonpayment into the above specified funds, and pay into the funds liquidated damages as provided for in the collective-bargaining agreements between Respondent and the Union."

2. Substitute the attached notice for that of the Administrative Law Judge.

<sup>1</sup> The Administrative Law Judge inadvertently failed to set forth in his Decision that Respondent is engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act, and that International Union of Operating Engineers is a labor organization within the meaning of Sec. 2(5) of the Act, as alleged in the complaint. Respondent has admitted those allegations either in its answer or at the hearing. Accordingly, we hereby correct such inadvertency and find that Respondent is engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

<sup>2</sup> The Administrative Law Judge inadvertently failed to include the narrow injunctive cease-and-desist paragraph in the notice. We shall correct the notice accordingly.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

WE WILL NOT refuse to allow the audit requested by the Union of our payroll books and records, including but not limited to all books of original entry, payroll records, canceled checks, check stubs, and payroll returns from January 1980 to the present, as requested by the auditor.

WE WILL NOT refuse to bargain collectively with International Union of Operating Engineers, Local 324, 324-A, 324-B, 324-C, and 324-D, AFL-CIO, as the exclusive bargaining representative of our employees coming within the jurisdiction of the Union.

WE WILL NOT alter the terms and conditions of employment without notifying the Union and affording the Union an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees for any and all losses they may have suffered attributable to our nonpayment into the various fringe benefit funds, and WE WILL pay into said funds liquidated damages as provided for in the collective-bargaining agreements between us and the Union.

WE WILL file all reports required by the administrators of the fringe benefit funds, as provided by our agreement with the Union, in a timely manner.

EXCO CONTRACTING, LTD.

**DECISION**

WILLIAM A. GERSHUNY, Administrative Law Judge: A hearing was held in the above-captioned matter on July 10, 1981. The parties at the hearing waived the right to file briefs and I made findings of fact and conclusions of law on the record. Accordingly, a hearing having been held, oral argument having been heard, and findings of fact and conclusions of law having been duly rendered on the record, I find a violation as set forth in the complaint.

It is ordered that the Respondent, Exco Contracting, Ltd., Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Making delinquent payments into fringe benefit funds established by the collective-bargaining agreement between Exco Contracting, Ltd., hereinafter Respondent, and International Union of Operating Engineers, Local 324, 324-A, 324-B, 324-C, and 324-D, AFL-CIO, hereinafter the Union; failing to make required reports; and refusing to allow an audit when requested by the Union, in order to police the administration of the contract, of all payroll books and records, including, but not limited to, all books of original entry, payroll records, canceled checks, check stubs, and quarterly returns from January 1980 to the present.

(b) Unilaterally altering terms and conditions of employment without notifying the Union and affording the Union an opportunity to bargain.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Make timely payments accompanied by required reports to the various fringe benefit funds established by collective-bargaining agreements between Respondent and the Union.

(b) Allow an audit of all payroll books and records including but not limited to all books of original entry, payroll records, canceled checks, check stubs, and quarterly payroll returns, as determined necessary by the auditor from January 1980 to the present.

(c) Make all fringe benefit payments owed since July 1980 to the various fringe benefit funds established by the collective-bargaining agreements between Respondent and the Union.

(d) Make whole its employees and the funds for any and all losses they have suffered attributable to Respondent's nonpayment, including loss of return on investment, additional administrative costs, expenses which would have been covered by the health and welfare plan, and

liquidated damages as provided for in the collective-bargaining agreements between Respondent and the Union.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to determine the amount of money owing to the funds or employees.

(f) Upon request, bargain with the above-named labor organization as exclusive representative of all employees in the aforesaid unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(g) Post at its current place of business copies of the attached notice marked "Appendix."<sup>1</sup> Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order,<sup>2</sup> what steps have been taken to comply herewith.

<sup>1</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>2</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.